

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

|                      |   |                            |
|----------------------|---|----------------------------|
| MICHAEL WAYNE POWELL | § |                            |
| v.                   | § | CIVIL ACTION NO. 6:09cv144 |
| DIRECTOR, TDCJ-CID   | § |                            |

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Michael Powell, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of a decision by the Director's Review Committee about some correspondence which he received. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

In his petition, Powell says that on April 2, 2008, he was notified by the prison mailroom that some street maps of Fort Worth which he requested were being denied because they could be used to facilitate an escape. Powell notes that no incident report was written, nor was there ever any proof that he was planning an escape; instead, Powell says, he needed the maps for his state habeas corpus petition. Powell complained that he was being denied the right to prove his case, because the maps would show that the police reports were not accurate. He asks that the Court order that the prison officials release the maps to him; he says that the maps can be brought to him to place in a legal envelope, which would then be sealed along with his state habeas petition and sent to the court in Tarrant County. He also asks that the Court order that he be provided with a loaner copy of the trial transcripts and that the present case be set for a hearing.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be denied. The Magistrate Judge concluded that the present petition did not challenge the

legality of Powell's conviction or confinement, but rather a decision by prison officials to deny him certain correspondence. The Magistrate Judge stated that the fact that Powell wanted to maps for use in his state habeas proceeding did not make their denial a proper subject for habeas corpus relief, because the decision of the Director's Review Committee did not itself place Powell in unlawful custody.

Powell filed timely objections to the Magistrate Judge's Report. In these objections, Powell says that he is being detained under false charges and that the prison officials have hindered his ability to obtain the maps to file with his state habeas petition. He asks that if this case is dismissed, it should be dismissed without prejudice, and again asks that the maps be released so that he can send them to the state court, and for a loan of the trial transcripts.

Powell's objections are without merit. He does not address the primary issue in the case, which is the fact that his claims in this petition do not challenge the fact or legality of his detention and thus are not a proper subject for federal habeas corpus proceedings. The Magistrate Judge correctly concluded that Powell failed to set out a valid claim for habeas corpus relief in his petition. In the interest of justice, however, the Court has determined that Powell's petition should be dismissed without prejudice, so that if Powell should file a later federal habeas corpus petition challenging the validity of his conviction, that petition will not be considered successive because of the present one. Powell's request for a loan of the trial transcripts is without merit because this Court, the Eastern District of Texas, does not have territorial jurisdiction over the state courts in Tarrant County, and the present petition does not directly implicate a conviction arising out of Tarrant County.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Petitioner's original application for habeas corpus relief, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for habeas corpus relief be and hereby is DISMISSED WITHOUT PREJUDICE. It is further

ORDERED that the Petitioner Michael Powell is hereby DENIED a certificate of appealability *sua sponte*, with such denial relating only to an appeal of this case and having no effect upon his right to challenge his conviction through any lawful means, in state or federal court. Finally, it is

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

**So ORDERED and SIGNED this 27th day of July, 2009.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**